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8 Attorneys for Plaintiff

FILED
08 MAR 10 AM 11:52
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: CP DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 BEN GILES,

12 Plaintiff,

13 v.

14 JUSTIN PAUL THOMPSON, WATER TOYS,
15 INC., ISLAND BOAT RENTALS, KDME,
16 INC., and DOES I through L, inclusive,

17 Defendants.

CASE NO.

08 CV 0439 L RBB
COMPLAINT FOR DAMAGES UNDER
GENERAL MARITIME LAW AND
DEMAND FOR JURY TRIAL

18 Plaintiffs, BEN GILES, allege as follows:

19 JURISDICTION AND VENUE

20 1. This suit herein arises and is within the original jurisdiction of the United States
21 District Court and within the Admiralty and Maritime jurisdiction of the above-entitled court
22 pursuant to 46 U.S.C. § 740, et seq., and 28 U.S.C. § 1333(1).

23 2. Plaintiff is, and at all times herein mention was, a resident of the State of California
24 and residing within the Southern District of the State of California.

25 3. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
26 mentioned, defendants, JUSTIN PAUL THOMPSON, WATER TOYS, INC., ISLAND BOAT
27 RENTALS, KDME, INC., and DOES I through L, and each of them, are, and were, individuals,
28 corporations, or other forms of business entities, that were either residing and/or transacting business

1 within the Southern District of the State of California.

2 **GENERAL ALLEGATIONS**

3 4. The true names and capacities, whether individual, corporate, associate or otherwise,
4 of defendants designated herein as DOES I through L, and each of them, are unknown to plaintiff,
5 who therefore sues such defendants, and each of them, by their fictitious names. Plaintiff will amend
6 this Complaint to allege their true names and capacities when they have been ascertained. Plaintiff
7 is informed and believes, and based thereupon alleges, that each of such fictitiously named
8 defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's
9 injuries and damages, as herein alleged, were proximately caused by these defendants.

10 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times herein
11 mentioned, each of the defendants was the agent and/or employee of each of the remaining
12 defendants, and was at all times herein, acting within the purpose and scope of such agency and/or
13 employment, and with the consent, authorization, permission and/or ratification of their co-
14 defendants, and each of them.

15 **NEGLIGENCE ALLEGATIONS UNDER GENERAL MARITIME LAW**

16 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times
17 herein mentioned, defendants, JUSTIN PAUL THOMPSON, was the operator and permissive user
18 of a 1995 Yamaha Wave Rider, bearing California registration number CF9386NY, Hull
19 Identification Number YAML6328B595 (hereinafter referred to as "defendants' personal water
20 craft") that was owned, leased, rented, maintained, repaired and otherwise controlled by defendants,
21 WATER TOYS, INC., ISLAND BOAT RENTALS, KDME, INC., and DOES I through L, and each
22 of them. Plaintiff is further informed and believes, and based thereupon alleges that defendants
23 personal water craft was used with the express and/or implied permission of the remaining
24 defendants, and each of them.

25 7. At all times herein mentioned, defendants personal water craft was used and operated
26 upon the navigable waterways of San Diego Mission Bay, which is a navigable waterway and
27 therefore their conduct falls within the confines of General Maritime Law.

28 8. On or about April 3, 2005, at or near 5:15 p.m., plaintiff, BEN GILES, was operating

1 a 1998 Kawasaki personal water craft, bearing California registration number CF6639JU, Hull
2 Identification Number KAW26369F888, upon the navigable waterways of San Diego Mission Bay,
3 which is within the venue of the Southern District of California.

4 9. At that time and place, defendants, and each of them, so negligently and carelessly,
5 owned, operated, rented, leased, maintained, repaired and otherwise controlled their personal water
6 craft so as to cause a collision with plaintiff, causing plaintiff severe and debilitating injuries and
7 damages.

8 10. Plaintiff is informed and believes that defendants, and each of them, were negligent
9 and careless under general maritime law in that defendants, and each of them, while owing and
10 operating their personal water craft, *inter alia*, failed to keep a proper look out (Rule 5 of the
11 International Inland Navigation Rules, U.S.C. §§ 2001-2038); failed to operate at a safe speed (Rule
12 6 of the International Inland Navigation Rules, U.S.C. §§ 2001-2038); failed to use all available
13 means appropriate to determine if a risk of collision existed (Rule 7 of the International Inland
14 Navigation Rules, U.S.C. §§ 2001-2038); failed to take action to avoid a collision (Rule 8 of the
15 International Inland Navigation Rules, U.S.C. §§ 2001-2038); failed to keep out of the way of
16 another vessel (Rules 12 and 13 of the International Inland Navigation Rules, U.S.C. §§ 2001-2038);
17 failed to take early and substantial action to give way (Rule 16 of the International Inland Navigation
18 Rules, U.S.C. §§ 2001-2038). Plaintiff is further informed and believes, and based thereupon
19 alleges, that the hereinabove alleged negligent conduct is governed by general maritime law, which
20 provides for a three year statute of limitations under 46 U.S.C. § 30106.

21 11. As a direct and proximate result of the negligence and carelessness of defendants,
22 JUSTIN PAUL THOMPSON, WATER TOYS, INC., ISLAND BOAT RENTALS, KDME, INC.,
23 and DOES I through L, and each of them, defendants personal water craft collided with plaintiff,
24 causing plaintiff to sustain severe and debilitating injuries and damages, as herein alleged.

25 12. As a direct and proximate result of the negligence and carelessness of defendants,
26 JUSTIN PAUL THOMPSON, WATER TOYS, INC., ISLAND BOAT RENTALS, KDME, INC.,
27 and DOES I through L, and each of them, as hereinabove alleged, plaintiff, BEN GILES, was hurt
28 and injured in his health, strength and activity, in all parts of his body, and sustained shock and injury

1 to his nervous system and person, all of which injuries have caused and continue to cause plaintiff
2 great mental, physical and nervous anxiety, and pain and suffering. Plaintiff, BEN GILES, is
3 informed and believes, and based thereupon alleges, that such injuries will result in some permanent
4 disability to plaintiff, all to his general damage, in an amount to be proven at time of trial. Plaintiff
5 is informed and believes, and based thereupon alleges, that the amount in controversy herein is in
6 excess of Seventy-Five Thousand Dollars (\$75,000.00) and within the jurisdiction of this Court.

7 13. As a further direct and proximate result of the negligence and carelessness of
8 defendants, JUSTIN PAUL THOMPSON, WATER TOYS, INC., ISLAND BOAT RENTALS,
9 KDME, INC., and DOES I through L, and each of them, as hereinabove alleged, plaintiff, BEN
10 GILES, was required to, and did, employ physicians, surgeons and therapists to treat and care for him
11 and did sustain an expense for such medical treatment and care, hospitalization, medicines, and for
12 other and further medical and incidental care, for which plaintiff has incurred liability in an amount
13 as yet unascertained. Plaintiff, BEN GILES, prays leave of Court to amend and/or supplement this
14 Complaint to insert the actual and reasonable value of all medical and incidental expenses when
15 same have been ascertained, or to prove same at time of trial.

16 14. Plaintiff, BEN GILES, is informed and believes, and based thereupon alleges, that as
17 a further direct and proximate result of the negligence and carelessness of defendants, JUSTIN
18 PAUL THOMPSON, WATER TOYS, INC., ISLAND BOAT RENTALS, KDME, INC., and
19 DOES I through L, and each of them, as hereinabove alleged, he will necessarily require additional
20 medical care, hospitalization, medicines, and other and further medical attention in the future and
21 will incur liability therefrom. Plaintiff, BEN GILES, prays leave of Court to amend and/or
22 supplement this Complaint to insert the actual and reasonable value of all such additional medical
23 and incidental expenses when same have been ascertained, or to prove same at time of trial.

24 15. As a further direct and proximate result of the negligence and carelessness of
25 defendants, JUSTIN PAUL THOMPSON, WATER TOYS, INC., ISLAND BOAT RENTALS,
26 KDME, INC., and DOES I through L, and each of them, as hereinabove alleged, plaintiff, BEN
27 GILES, became incapacitated and prevented from following his usual occupation for an
28 undetermined period of time; and as a result thereof, plaintiff suffered a loss of earnings and earning

1 capacity and ability and other financial losses in an undetermined amount. Plaintiff, BEN GILES,
2 prays leave of Court to amend and/or supplement this Complaint to include the exact amount of said
3 loss of earnings and earning capacity and ability when ascertained, or to prove same at time of trial.

4 WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows:

5 1. For general damages in an amount in excess of \$75,000.00, all in an amount to be
6 proven at time of trial;

7 2. For medical and related expenses, past, present and future, all in an amount to be
8 proven at time of trial;

9 3. For loss of earnings and earning capacity and ability, past, present, future, and other
10 financial losses, all in an amount to be proven at time of trial;

11 4. For costs of suit incurred herein; and

12 5. For such other and further relief as this Court may deem just and proper.

13
14 DATED: March 10, 2008

LAW OFFICES OF FRIEDBERG & BUNGE

15
16
17 By: 

THOMAS F. FRIEDBERG, ESQ.
Attorney for Plaintiff, BEN GILES

18
19 **DEMAND FOR JURY**

20 Plaintiff hereby demands a jury trial pursuant to Rule 38, of the Federal Rules of Civil
21 Procedure.

22 DATED: March 10, 2008

LAW OFFICES OF FRIEDBERG & BUNGE

23
24
25 By: 

THOMAS F. FRIEDBERG, ESQ.
Attorney for Plaintiff, BEN GILES

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

148576 - SH

**March 10, 2008
11:52:40**

Civ Fil Non-Pris

USAO #: 08CV0439

Judge.: M. JAMES LORENZ

Amount.: \$350.00 CK

Check#: BC23141

Total-> \$350.00

FROM: GILES V. THOMPSON ET AL

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

BEN GILES

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

DEFENDANTS JUSTIN PAUL THOMPSON, WATER TOYS, INC.
ISLAND BOAT RENTALS, INC., and DOES I
through CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

THOMAS F. FRIEDBERG, ESQ., 610
WEST ASH ST., STE 1400, SAN DIEGO
CA 92101 (619) 557-0101

ATTORNEYS (IF KNOWN)

'08 CV U439 L RBB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

46 USC section 740; 28 USC section 1333(1)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 194 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$
Excess of \$75,000

Check YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE March 8, 2008

SIGNATURE OF ATTORNEY OF RECORD

CR 148576 ser #350 3/11/08